IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19838 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
MANOJKUMAR DASARTHBHAI SUTHAR & 1 - Respondent(s)

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Appearance :
MS ARCHANA RAVAL ASSTT GOVERNMENT PLEADER for Petitioner(s) : 1 - 2.
FALGUNI D UPADHYAYA for Respondent(s) : 1,
MR NC SHAH for Respondent(s) : 2,
MR NV GANDHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 07/08/2006

ORAL JUDGMENT

1. The petitioner has challenged the judgment dated 15.10.2004 of the Gujarat Secondary Education Tribunal in Application

No.371 of 2003 whereby the case of respondent No.1 was directed to be forwarded for compassionate appointment by the Secretary, Education Department of the State Government. The Tribunal had, in the process, quashed the order dated 26.9.2000, the decision dated 18.10.2003 and the decision dated 12.9.2000 mainly on the ground that the income of the family of the deceased employee was presumed to be exceeding Rs.2500/- per month, whereas it was in fact Rs.2028/- per month.

2. The learned counsel for the respondent relied upon the Government Resolution dated 4.7.1988 which permitted making of an application for compassionate appointment within five years of the death of an employee and the provisions under which the son of the deceased employee could make an application after attaining the minimum age of 15 years for appointment on a post in Class IV, or after attaining the age of 17 yeas for appointment in Class III service.

3. It was seen from the record, and conceded by the learned counsel, that, factually, the father of the petitioner had passed away on 4.4.1993 and he had attained the age of 15 years in September, 1994 and attained the age of 17 year in September, 1996. Admittedly, he made the

application on 7.4.1998 which was beyond five years from the date of death of his father. As far as the criterion of income is concerned, it was seen from the Government Resolution dated 7.9.2002 that the criterion of income was removed by that government resolution in respect of the cases where the employee had passed away after 1.1.1996. Admittedly, the father of the petitioner had passed away earlier.

4. Therefore, in view of the provisions of the Scheme for compassionate appointment, as amended from time to time by the aforesaid Government Resolutions dated 4.7.1988 and 7.9.2002, the petitioner was not eligible for consideration for compassionate appointment. In view of that clear legal position, the impugned judgment and direction could not be sustained and accordingly it is quashed. Rule is made absolute with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)